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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/865,001	05/24/2001	Marc Noel Blais	ROC9-2000-0162-US1	3815

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EXAMINER

ALI, SYED J

ART UNIT	PAPER NUMBER
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2195

DATE MAILED: 11/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding..

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/865,001

Applicant(s)

BLAIS ET AL.

Examiner

Syed J. Ali

Art Unit

2195

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 4, 5, 9 and 16.
Claim(s) objected to: 8 and 15.
Claim(s) rejected: 1, 3, 6 and 10.
Claim(s) withdrawn from consideration: 2, 7, 11-14, 17 and 18.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). Oct. 31, 2005
13. ☐ Other: _____


MENGOL
ATTORNEY AT LAW

Continuation of 5. Applicant's reply has overcome the following rejection(s): The rejections under 35 USC 101 are hereby withdrawn. Applicants' amendment overcomes the rejection by limiting the claimed program product to a tangible form.

Continuation of 11. does NOT place the application in condition for allowance because: Applicants submit that claim 1 is allowable over Whaley in view of the argument that Whaley only places an object on the stack once it is known to not escape. Applicants allege that claim 1 (and other similar rejected claims) are distinct for placing an object on the stack based on the assumption that an object will not escape, and changing allocation to the heap if the assumption is incorrect. If this were the only possible interpretation of the claim, Examiner concedes that the claim would in fact be patentably distinct from Whaley. However, Examiner cannot agree that the claim is limited to the embodiment that Applicants allege. Accordingly, the rejection must be maintained.

The limitation in the claim relied upon for Applicants argument is the combination of the escape analysis and object allocation mechanisms. There is no clear limiting language that there is an assumption of an object being "no escape". An object is allocated to the stack if it has been marked "no escape", but the object may not necessarily be marked until after it is known to not escape. The claim language as presented could just as easily reflect an assumption that an object is global escape, and only allocating the object to the stack if it is known to not escape. The distinction between these assumptions can be thought of as "optimistic" versus "pessimistic" assumptions. Applicants rely on the optimistic assumption at page 12 of the present arguments, and it is conceded that if this was the only embodiment contemplated by the claim, it would be allowable over Whaley. However, Applicants' specification indicate otherwise. Specifically, at pages 22-23 of Applicants' specification, it is clear that at least one embodiment of the claimed invention makes a pessimistic assumption. It is clear that this is the approach used by Applicants, as it is stated "we ensure that anything that might be passed to an unpredictable method will be marked as global escape." This contradicts the argument presented by Applicants in the present amendment; it is doubtful that it was intended to read this embodiment out of the claim.

Accordingly, the rejection is maintained, as Applicants have noted that Whaley teaches this method of allocating objects (see Applicants' arguments, page 12, "In Whaley, as in the other prior art, if an object was not yet determinable whether it escaped or not escaped it would be placed in the heap.") In fact, Applicants go as far as to say this is the prior art approach. It is hereby recommended that the claims be amended to clearly reflect the optimistic assumption of placing an object on the stack, i.e. marking it as no escape, during the initial compilation analysis.